IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3557 OF 1989

Shri Pravinchand Anandji Jajal, .. Petitioner.

Vs

Shri Ismail Gori Mujawar,
deceased by his heirs:
1) Shri Kamal Ismail mujawar
and ors. .. Respondents

Mr.Sadanand S.Pandit, for the petitioner.

Mr H.P.Gole, for respondent nos 1,2A to 2F.

CORAM : D.B.BHOSALE,J.

DATE : 2nd December, 2004.

ORAL ORDER:

1. By means of this writ petition under Article 227 of the Constitution of India, the petitioner seeks to challenge the judgment and order dated 8.3.1989 rendered by the Maharashtra Revenue Tribunal, Pune (for short, "MRT") allowing the revision application filed by the respondents by which the concurrent findings recorded by the authorities below by the judgment and orders dated 19.4.1983 and 25.6.1984 were set aide and the matter was remanded to the trial Court for its decision afresh in the light of the observations made therein.

2. To state in brief, the petitioner is a tenant, whereas Ismail Gori Mujawar was the original landlord. The respondents are the heirs and legal representatives of the original landlord. The proceedings were initiated by the tenant under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act") The land in dispute is 1/3rd portion of Gat No.734, admeasuring 5 Ares situate at village Hatkanangale, (for short, "the said land").

3. The case set up by the petitioner is that he is in possession of entire Gat no.734, which admeasures 14 Ares, out of which in 2/3rd portion as owner and in 1/3rd as tenant since prior to 1/4/1957. The Addl. Tahasildar & A.L.T., Hatkanagale in the application filed under section 32G by order dated 19.4.1983 fixed the purchase price and allowed the petitioner to pay it in one instalment within one year from the date of the order. That order was carried in appeal by the respondents. In the appeal, the Sub Divisional Officer, Karveer Division, by his judgment and order dated 25.6.1984 affirmed the order dated 19.4.1983. The matter was further carried in revision by the respondents and in which the MRT remanded the matter to the Tahasildar & A.L.T for its decision afresh, in the light of the observations made in the said judgment.

4. There does not seem to be any dispute that the petitioner was in possession of the land in 1952,i.e.prior to 1.4.1957. However, according to the respondents, the petitioner lost possession in pursuance of the decree passed in Civil Suit No.59/1942/44. That suit was filed by deceased Ismail Ghori Mujawar for recovery of possession of the land in dispute therein. According to the respondents, the land involved in the instant writ petition and in the suit was one and the same and since its possession was obtained by the respondents after fighting the civil suit for eight years, they had no valid reason to allow the petitioner to continue in possession thereof either as a tenant or in any other capacity. Both the authorities below, after considering the entire material placed before them and considering the submissions including the submission that the subject matter of the civil suit and the said land was one and the same, have concurrently held that the petitioner was in possession as a tenant of the said land and fixed the purchase price.

5. The MRT, however, allowed the revision application holding that an issue in respect of the identity of the land in dispute has been raised and further that merely because the 7/12 extracts show that the petitioner was

in possession of the said land as tenant, does not mean that they were in possession as tenant. It was further held that except the 7/12 extracts, no other document was produced by the petitioner in support of his claim of tenancy and further that the respondents were not given adequate opportunity to cross examine the petitioner. Against this backdrop, the MRT allowed the revision and remanded the matter to the trial Court by the order dated 8.3.1989, impugned in the present petition.

6. Mr Pandit, learned counsel for the petitioner, submitted that the MRT acted in complete disregard of its power under section 76 of the Act and proceeded as if it was dealing with the matter as a court of first instance or as an appellate court. In support of this contention, he placed heavy reliance upon the judgment of the Apex Court in Maruti Bala Raut Vs Dashrath Babu Wathare and ors, AIR 1974 SC 2051. He further submitted that the MRT wrongly based its finding on decree in the civil suit to hold that the identity of the said land was in dispute. He invited my attention to the possession receipt (Kabajepattil) dated 27.1.52 which was executed in pursuance of the judgment and decree in the civil suit and contended that the land involved in the said suit and the subject matter of the instant writ petition are different and, therefore, the MRT was wrong

in holding that there is a dispute regarding identification of the land. Mr Pandit submitted that apart from the entries in the revenue record, the petitioner had also produced some other documents on record showing that the petitioner used to get the said land cultivated by engaging labourers. In any case, According to Mr Pandit, the MRT ought not to have disturbed the concurrent findings recorded by the authorities below on the basis of the material produced on record including the judgment and decree in the civil suit which formed the basis to remand the matter for its decision afresh.

7. On the other hand, Mr Gole, learned counsel for the respondents, submitted that this Court has no powers under Article 227 of the Constitution of India to interfere with the order passed by the MRT since the impugned order is substantially just and reasonable. According to him, no case is made out for interference under Article 227. He placed heavy reliance upon the judgment of Kallawwa Shattu Patil and ors Vs. Yallappa Parasharam Patil and Anr, 1992 Mh.L.J. 34. He further submitted that the identity of the said land is in serious dispute. In 1952 the landlord had obtained possession of the said land in pursuance of the judgment and decree in civil suit and since then he is in

possession thereof. According to Mr Gole, the MRT rightly remanded the matter as the question of the identity of the said land was raised on the basis of the Kabjepatti dated 27.1.1952. Mr.Gole submitted that the petitioner was not a lawful tenant of the said land and hence the proceedings under section 32G of the Act were not maintainable. He further placed reliance on the judgment of this court in Spl.C.A.No. 1625 of 1971 (Amidas Gordhandas Vs. Poslya Dharma) decided on 21.1.1975 and contended that the entries in the revenue record would not establish the rights of the party.

8. I perused all the three judgments and other material placed before me. From perusal of the judgments of the two authorities below, it is clear that both had considered the entire material placed before them consisting of the entries in the revenue record, receipts of the payment made by the petitioner to the labourers who used to cultivate the said land, oral evidence, the judgment and decree in the civil suit etc. and recorded the finding that the petitioner was in possession of the said land as a tenant and had accordingly fixed the purchase price. The MRT, on the other hand while interfering with the concurrent findings, mainly relied upon the judgment and decree in Civil Suit No.59/1942/44 to which the present petitioner

was also a party. The said suit was decreed and the suit land was restored to the respondents and Kabjepatti to that effect was executed on 21/1/1952. I perused the kabjepatti which clearly shows that it was in respect of the revenue survey no.402, Hissa no.2, admeasuring 3 Ares and Survey no.402, Hissa No.3 admeasuring 17 Ares. Whereas the property in dispute is 1/3rd portion of Gat no.734 admeasuring 5 Gunthas. The description of the property given in the Kabjeepati and of the said land does not tally. The petitioner has come before the Court with specific case that he was in possession of the said land since 1952 and he continued in possession thereafter throughout and his possession was never disturbed. If the respondents had to dispute the identity of the said land, they ought to have done that before the trial Court. As against this, in the 7/12 extracts right from 1956-57 till the application under section 32G was filed by the petitioner, their names were shown in the "Other rights column" as tenants. The respondents never challenged those entries, nor did they make any efforts to get the entries in the revenue record cancelled. In so far as sufficient opportunity is concerned, the MRT has held that the respondents were not allowed to cross-examine the tenant. However, it is clear from the judgment of the authorities below that despite sufficient opportunities, the respondents-

landlords failed to cross-examine the tenant. In view of that, it cannot be said that the opportunity was not given to the respondents to cross-examine the tenant.

9. The authorities below have concurrently held that the petitioner was in possession of the said land as a tenant relying upon the material placed before them. The MRT was not expected to act as a court of appeal and reappreciate the material/evidence produced before it and come to its own conclusion other than the one reached by the authorities below. It is true that this Court under article 227 of the Constitution of India is not expected to reassess the material and disturb the conclusion recorded by the authorities below. However, keeping the facts of the present case in view, I am of the considered opinion that the MRT has committed a manifest error in reappreciating the evidence and setting aside the concurrent findings recorded by authorities below. The MRT did not exercise the discretion reasonably and in a judicial manner. It was not expected to convert itself into a Court of Appeal and indulge in reappreciation or evaluation of evidence. The revisional authority under section 76 of the Act is normally to exercise the discretion in the cases where error is manifest and apparent on the face of record and grave injustice or gross failure of justice has

occasioned thereby. The instant case is one which, in my opinion, would not fall in that category. It is also well settled that the High Court can exercise its jurisdiction under Article 227 and set aside the judgment of the MRT finding that the conclusion arrived at is likely to cause miscarriage of justice. The learned counsel for the respondents at this stage submitted that the matter be remanded to the MRT for its decision afresh since the MRT did not consider the merits of the case. In my opinion, that would be useless formality and it would unnecessarily further prolong the matter. The parties are in litigation since more than 20 years. I am satisfied that the orders passed by the authorities below are based on evidence on record and are just and proper. The writ petition is accordingly allowed. The order passed by the MRT is set aside. The orders passed by the authorities below stand confirmed. Rule made absolute. No order as to costs.

(D.B.BHOSALE, J.)